CRIMINAL ATTEMPT. — In *People* v. *Gardner* (25 N. Y. Supp. 1072, Supr. Ct.) an interesting question was raised in the law of attempt. By the New York Penal Code, § 552, "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under color of official right." By § 34, "an act done with intent to commit a crime, and tending, but failing, to effect its commission, is an attempt to commit that crime." In the actual case, a police officer tried to extort money from a person who was not put in fear by his threats, but was acting as a mere decoy to inveigle him into the commission of the crime. On this state of facts the court held that there was no attempt, as the completion of the act was in itself an impossibility, since fear, a necessary element of the crime, was wanting.

Some objections to this decision were presented in 7 HARVARD LAW REVIEW, 435, and it has since been overruled by the Court of Appeals of New York in the case of *People* v. *Gardner* (38 N. E. R. 1003).

The ultimate possibility of success is not, as was thought in the lower court, the only test of an attempt (*Comm.* v. *McDonald*, 5 Cush. 365), but is merely one of a variety of considerations which must be kept in mind when the question is one of criminal attempt. Given the intent, the problem is what constitutes the guilty act; and the solution depends on the greater or less extent to which the deed committed is to be regarded as a menace to the public (1 Bish. Crim. Law, § 737). To determine this, the case must be scrutinized in various lights. Is the act of sufficient magnitude, is there a distinct public policy involved, is there an infringement on personal or property rights, is the act near completion in time and place, are the means adapted to the end from a reasonable man's standpoint, and what that standpoint should be, — are all, as well as the question of ultimate possibility of success, important tests by which to determine the criminal act. These considerations are not, of course, always of equal weight, but shift and group themselves into infinite kaleidoscopic arrangements, in which the respective relations of the various rules are never stable. If the act is in its nature unequivocal, as the procurement of counterfeiter's dies, it would be found criminal more readily than if it can be easily explained on an hypothesis of innocence (May, Crim. Law, § 183), and if the act merely fails because the intended victim is not to be duped, as in cases of trying to obtain money under false pretences, the law is pretty clearly settled that the mere impossibility of success will not prevent the act being a crime (2 Bish. Crim. Law (8th ed), § 488). It would seem that the case of extortion is closely analogous to that of false pretences, and the decision of the Court of Appeals is one which will be welcomed as expounding the better view upon the subject.

DOES QUASI-CONTRACT LIE FOR A SAVING? — The United States Government gave a paving contract to the lowest bidder, after fair warning that the saving thus effected would be due to infringement upon a patent held by one Schillinger for a process of laying pavements.

Schillinger brought an action in the Court of Claims, and as the United States permits itself to be sued only in "contract express or implied," it was necessary for him to show that his case contained the elements of such an implied or *quasi* contract as the courts will allow to be included under that head. In the Court of Claims the decision was against him, and now, on appeal, the Supreme Court confirms that